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An Introduction to the United States Legal System: Cases and Comments

Alberto M. Benítez

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An Introduction to the United States Legal System

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**An Introduction to the United States Legal System
Cases and Comments**

Alberto Manuel Benítez
George Washington University School of Law

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Preface

In this casebook, I introduce non-US trained lawyers and law students to the intricacies and nuances of our legal system. The world is becoming a smaller place and as a consequence of this globalization the need for lawyers who are international in perspective and competence is increasing. Whatever one's opinion about globalization there is no doubt that the US legal system is at the forefront of these changes.

The idea for this casebook arose after I taught the course "Introduction to the US Legal System" at the law school of the Instituto Tecnológico Autónomo de México (ITAM) in Mexico City during the summer of 2000. I was impressed by the knowledge my Mexican law students had of the US legal system, and by how eager they were to learn more about it. Because I believe that people are people regardless of their citizenship I assumed that some lawyers and law students in other countries might be similarly interested. I like to flatter myself by thinking that I've compressed three years of US legal education into this one casebook. The reader will decide if I've succeeded.

I thank the many law students who assisted me in the preparation of this casebook, especially April Joy Mears, Shephali Agrawal, Connie Chan, María Alejandra Negrón, Emily Purcell, and Gening Liao. Also many thanks to Professor José Roldán Xopa, from the ITAM law school, and David López, formerly of St. Mary's law school in San Antonio, for their friendship and support. Finally, but most importantly, my deepest love, thanks, respect, and admiration to my wife, Janice A. Salas.

Alberto Manuel Benítez
The George Washington University Law School
July, 2005

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Introduction to the U.S. Legal System
Professor Alberto M. Benitez

ABSTRACT

This casebook introduces non-U.S. trained lawyers, law students, and college undergraduates to the intricacies and nuances of our legal system. The world is becoming a smaller place and as a consequence of this globalization, the need for lawyers who are international in perspective and competence is increasing. Whatever one's opinion about globalization, there is no doubt that the U.S. legal system is at the forefront of these changes. This book attempts to compress three years of U.S. legal education into one casebook.

The following materials in this chapter, and throughout this book, will help non-United States law students and pre-law students gain a better understanding of the legal system and the overall legal culture at work in the United States. Particularly, within this chapter is information on the infamous Socratic Method employed, to some extent, at most law schools throughout the country. Also, within this chapter is information that draws specific contrasts between the United States legal system and others. As the reader continues through the text, he will begin to understand that in the United States legal culture, the way one arrives at the answer is just as important as answering the question.

Given its intended audience, this book is an introduction to comparative legal studies, under the theory that, in establishing what the law is in each jurisdiction under study, comparative law (and for that matter, studies of foreign law, as well) should (a) be concerned to describe the normal conceptual world of the lawyer, (b) take into consideration all the sources upon which a lawyer in that legal system might base her opinion as to what the law is, and (c) take into consideration the gap between the law on the books and law in action, as well as (d) important gaps in available knowledge about either the law on the books or the law in [action].

AN INTRODUCTION TO THE UNITED STATES LEGAL SYSTEM

Chapter 1: Legal Culture in the United States

Introduction

The following materials in this chapter and throughout this book will help you gain a better understanding of the legal system and the overall legal culture at work in the United States. Particularly within this chapter is information on the infamous Socratic Method employed, to some extent, at most law schools throughout the country. Also within this chapter is information that draws specific contrasts between the United States legal system and others. As you continue through the text, you will begin to understand that in the United States legal culture, the way you arrive at the answer is just as important as answering the question.

The Socratic Method

Socratic Method Still Debated; It Forces Legal Thought but May Intimidate Women, Minorities

By David Folkenflik, The Baltimore Sun

For asking students questions rather than giving them answers, Socrates was offered exile or death. He chose death. Now, 24 centuries later, adversaries are still trying to kill off his teaching method.

This time, the dispute arises at American law schools, where a caustic version of the Socratic method, once the standard, is on the wane. Disliked by students who are put on the spot, condemned as hostile to women and minorities, the teaching style again is at risk of exile. The teaching practice evolved from Harvard Law School, where students were questioned on legal arcana in what often felt like an interrogation.

In the 1973 film "The Paper Chase," based on the Harvard experience, the tart-tongued Professor Kingsfield (actor John Houseman) tormented one wary student after another, each fearing abject humiliation. For many professors, Kingsfield reminds them of what they liked least about law school.

"It wasn't something that I remember nicely about my law school days," says Pamela Gann, dean of Duke University's School of Law. "I do not think being intimidated in class added to my learning capabilities."

"Having said that," she adds, "I think some of the goals of the Socratic method are laudatory."

First, the brief for the prosecution: Many law students find it a terrifying experience. Some scholars, including Lani Guinier, a University of Pennsylvania law professor, argue that it keeps women and minorities off balance.

Several black and women law students at the University of Maryland say they are ambivalent about the issue: Unless professors are scrupulously even-handed, the exchanges allow generally white, male students to bond with their generally white, male instructors through glib rejoinders.

And the Socratic method fosters competition rather than collaboration, several female professors and students say.

Anxiety can be motivating, says Susan Leviton, a University of Maryland law professor. But the Socratic method often turns law students off, she says.

"It sort of measures the students who are articulate, witty, quick thinkers. Law is a lot more than that," she says.

Now, the defense: By being grilled on the intricate implications of court decisions, students learn to think on their feet—just as they would if they were arguing motions before skeptical judges.

"If it involves the students knowing they may be called on, they both prepare better and follow what's happening in class better," says Maryland law Professor William Reynolds, who graduated from Harvard Law in 1970. "The Socratic method also, by asking questions, gets more deeply into policy and practice-type issues than a mere lecture." During a recent 50-minute class, Reynolds singled out six students for intense questioning.

"You're under constant anxiety that you're going to be called on," says Susie Ahn, a first-year law student. When Reynolds called on her first in the class on civil procedures, she says, "My heart just dropped."

Ahn fenced with Reynolds neatly, fending off his initial questions until she felt confident of her reply, and he soon left her for another target. Eight minutes later, he returned to Ahn, as he did throughout the class.

Reynolds teased, vexed, prodded and provoked her classmates, occasionally interrupting his queries with short bursts of background information he considers to be "mini-lectures."

He paced before the front of the long rows seating 100 students in the class, his voice soaring with each question or aside. In short succession, Reynolds mocked the law school's dean, the Supreme Court, the Navy, Baltimore accents and the legal profession itself. He needled and then praised, in feigned astonishment, a student who wrote a paper on getting thrown out of a court proceeding during voir dire (jury selection).

"I like it because it livens up the mood," Ahn says.

Yet for law students, some of whom graduate tens of thousands of dollars in debt, the concept of paying to be harangued can be a little startling.

Yolanda Douglas, a first-year Maryland student from Upper Marlboro, says she enjoyed Reynolds' course, in part because he seems to pick on everyone equally. But, she says, "as a student, I prefer lectures—you get the law from the professor's mouth." "It's kind of sad to admit, but the ultimate goal is to do well on the exam," she says.

It's unclear how many law schools rely heavily on the Socratic method, according to the American Bar Association. The practice is most often used during the first year of instruction, say professors at several law schools.

Younger faculty members have been innovative in attempts to shake off tradition. Some professors tell students who's going to be called on—last names beginning with "A" through "H," or the back three rows, for example. Some simply lecture and call on volunteers to answer questions.

Others, like Maryland's Leviton, have found new means. Her courses are structured to give hands-on experience with cases at a law clinic for children. Students often work in teams and tend to be far more collegial than in courses taught through the Socratic method.

"They investigate facts, develop a theory of a case, deal with witnesses who aren't helpful," Leviton says. "I think that's what lawyering is all about," Leviton says.

In a new book, Guinier argues that the Socratic method is sometimes used to establish the dominance of the instructor over the class in a particularly male role. "It is perceived as a fight to prevail, not a method of inquiry," Guinier writes. "To the extent this occurs, the technique of Socratic teaching looks to many women like ritualized combat."

Even those who defend the Socratic method say it has softened from its harshest form at Harvard, where the instructor demands responses from students but volunteers no information himself.

"Anybody at Maryland or at Harvard or at Penn who tried to teach exactly that way in 1997 would meet significant student resistance," says Donald Gifford, dean of Maryland's law school. "There is an expectation the person at the front of the room is going to provide the answers."

Reynolds' students, at least, remain fans. "He makes a lot of jokes," says Wayne Cooper, a black student. "If you're a minority in a law school, you may have a problem with the Socratic method. They badger you with questions. I think it prepares you more to be an attorney."

Introduction to Legal Writing and Oral Advocacy, N. Schultz, 1993. with notation "Reprinted with the permission of Lexis Nexis."

LEARNING ABOUT THE LEGAL SYSTEM

§ 201 The Legal System and Legal Writing

Much of the legal writing you will do in your career will involve analyzing legal problems. To analyze a legal problem you must understand the sources of our law and their relationships to each other. You must also understand the workings of our legal system. This chapter provides a broad introduction to our court system, the common law and statutory law and interpretation. Once you understand these as aspects of the legal process you will be able to evaluate a legal problem properly and prepare an accurate and well-reasoned legal analysis.

§ 202 Sources of Law and Their Hierarchy

There are three primary categories of law: constitutions, statutes and common law. The Constitution of the United States and the 50 state constitutions set out the structure and powers of government, protect individual liberties and govern a host of areas ranging from crime to social security benefit levels. The common law is the law judges make when they rule on cases. When a case is decided it becomes a precedent for future similar legal conflicts in the same jurisdiction.

An applicable constitutional provision statute or common law rule always governs the outcome of a legal problem. The existing case law will assist you in interpreting the statute or constitutional provision in the context of your particular case. When there is no relevant constitutional provision or statute, as there often is not, the existing body of case law, called the common law, is the sole source of authority for evaluating and resolving your case.

§ 203 The Court System

Two court systems operate simultaneously in the United States: the state court system and the federal court system. In both the state and federal court systems there are two types of courts: trial courts and appellate courts. The following is an overview of each system.

(1) The State Courts

Each of the 50 states has a court system. Although the structure of that system differs from state to state it is always hierarchical. There are trial courts often an intermediate appellate court and a court of last resort, the tribunal at the top tier of the court system. In addition, there also may be numerous other courts that perform specialized roles such as small claims courts, juvenile courts and housing courts.

A trial court is presided over by one judge and may or may not include a jury. The function of a trial court is to determine the facts by evaluating the evidence in a case and to arrive at a decision by applying the law to the facts. Trial courts at the state level may be divided into courts of limited jurisdiction and courts of general jurisdiction. Pursuant to the provision of the state constitution and state laws, courts of limited jurisdiction rule on certain specific matters such as violations of criminal law. Courts of general jurisdiction are empowered to hear a broader range of civil and criminal matters and often also review appeals of courts of limited jurisdiction.

From the decision of a trial court the losing party may appeal to the next level, the appellate court. The appeal is heard by a panel of three to five judges of whom a majority must agree on a particular result. The result forms the basis of the court's opinion deciding the case. The appellate court evaluates the lower court's decision and determines whether it committed any legal error that would warrant reversing or modifying the decision or ordering a new trial. The decision of the appellate court may be appealed to the state's higher court, which has the discretion to choose most cases it will hear. The decisions of the courts of last resort are final and there is no further appeal of state law issues.

This diagram of the California courts illustrates a typical state court system.

The Federal Courts

The Constitution and certain federal statutes establish the federal courts and empower them to hear certain kinds of cases. Federal courts hear all cases that arise under federal law, such as those involving the United States Constitution or federal statutes, disputes between two states or cases in which the United States is a party.

Like the state systems, the federal court system is divided into trial courts, appellate courts and a court of last resort. The trial courts are called district courts. Each state has at least one district court and that court's jurisdiction is limited to the territory of its district. In a district court case, a judge sits with or without a jury depending on the nature of the case and the wishes of the parties.

The intermediate appellate courts in the federal system are called the United States Courts of Appeals. The Courts of Appeals hear appeals from the district courts located in the same circuit. A circuit is a designated geographical area usually encompassing several states. The United States is divided geographically into 13 circuits. Eleven of these circuits are identified by number, for example, the United States Court of Appeals for the Third Circuit. There is also the United States Court of Appeals for the District of Columbia and the United States Court of Appeals for the Federal Circuit, which hears appeals in patent cases, certain international trade cases and some cases involving damage claims against the United States. Usually, three judges sit on a panel to decide a particular case and at least two must agree for a decision to be reached.

The Supreme Court of the United States, consisting of the Chief Justice and eight Associate Justices, is the highest court in the federal system. The Court hears a limited number of

cases from the Courts of Appeals and on certain issues from the district courts and the highest state courts. The Court must accept review of certain types of cases but has the discretion to select others. Cases heard by the Supreme Court generally involve new or unresolved questions of federal law affecting people throughout the country and interpretation of federal statutes or the United States Constitution.

The diagram below illustrates the federal court hierarchy.

Comparing and Contrasting the U.S. Legal System with Foreign Systems

Disparate Justice Imprisons Mexico's Poor; As Police Focus on Petty Crime, Major Offenders Often Go Unpunished

By Kevin Sullivan and Mary Jordan, *The Washington Post*.

Giovanni Hurtado Aviles was hurrying to his engineering class when he realized he didn't have the two pesos — about 20 cents — for the subway. When he tried to use somebody else's pass to get on, he was caught and hauled to jail. "I made a mistake. I am really sorry. I won't do it again," Hurtado, 20, said he told the guard who nabbed him that January morning.

But the Mexican justice system, which often fails to punish serious criminals, zealously prosecutes the most minor of offenders. So the college student with no criminal record was denied bail and forced to mop floors for 12 hours a day for two months while he awaited trial.

"Our justice system is not just," said the Rev. Jose Luis Tellez, a Roman Catholic priest and lawyer who tries to get such prisoners freed. "The real criminals are at home in their houses while these people are in jail."

Mexico's courts and jails are clogged with people like Hurtado, people who stole a bicycle, bread, shampoo, subway fare. More than half of the 22,000 prisoners in Mexico City's jails are there for offenses so slight that human rights advocates — and increasingly, city officials — say they never should have been jailed in the first place.

According to recent testimony to the Mexican Congress by top law enforcement officials, well over 90 percent of serious crime goes unpunished. In a nation with one of the world's highest kidnapping rates, much drug-related bloodshed and a chilling level of violence on the streets of the capital, the prisons are choked with people who stole to eat. Tellez said a man who stole a Gansito, similar to a Twinkie, was released in November after spending three years in jail. He said another man who stole bread worth about \$4 was sentenced to six years.

Public opinion polls show that Mexicans are fed up with their justice system. One of the key complaints is that it thunders down so hard on petty criminals. At every turn, the system is consumed with the smallest crimes: Poorly trained police focus on the easiest crimes to solve; corrupt officers, often paid to look the other way when there is more serious crime, have no such incentive to let small-time offenders go. Legislators under political pressure to combat rising crime rates have set tough minimum sentences for the smallest of robberies.

The result is that in many cases, as with Hurtado, the subway cheater, judges are forced by the law to hand down sentences they believe are unfair. Judges in Mexico have almost no discretionary authority. The Mexican legal system, based in 19th century Napoleonic Code, deliberately limits the role of judges. The theory is that legislators should craft penalties and judges should simply impose them.

The judge in Hurtado's case wanted to be lenient but said the law would not let him. He convicted Hurtado of "using a false document" — showing a subway worker's pass that Hurtado

said he had found on the floor. That is the equivalent of a felony, a crime considered too grave to warrant bail, punishable by a minimum of four years in prison. Behind bars, Hurtado vomited from nervousness. He fell far behind on his class work and lost wages from an after-school job.

"What my son did wasn't a crime; it was a mistake," said his mother, Laura Aviles Rodriguez. "Who would call this justice?"

Behind the high brick walls of a Mexico City development called Poinsettia, amid gardens of purple bougainvillea and expensive SUVs parked in a row on the cobblestones, Oscar Espinosa Villareal lives the life of an accused embezzler with means.

Espinosa, Mexico City's mayor from 1994 to 1997, is accused of illegally diverting \$45 million that was never accounted for during his term. When a judge issued a warrant for his arrest in August 2000, he did what many wealthy Mexicans do in the same situation: He bought a plane ticket and fled the country. His top aide is still a fugitive.

Espinosa flew to Canada and then Nicaragua, where he was caught. He maintains he has done nothing illegal and that he is the victim of a revenge campaign by his political enemies. He fought extradition on grounds that the case against him amounted to political persecution, but the Nicaraguans sent him home.

Espinosa is part of the well-connected old guard of the Institutional Revolutionary Party, or PRI, which ran Mexico from 1929 to 2000. He served as campaign finance manager for his old friend, Ernesto Zedillo, who became president and rewarded Espinosa with the mayor's job, a presidentially appointed position until 1997. When Espinosa's term expired, Zedillo appointed him to serve as national tourism minister from 1997 to 2000.

When Espinosa arrived back in Mexico on a federal police jet from Nicaragua, his wealth and connections kicked in. He hired one of Mexico's leading lawyers, who persuaded a federal judge to issue an order forbidding his arrest and detention, allowing him to remain free pending trial. Espinosa was ordered to post bail of about \$400,000. He paid about \$12,000 in cash, put up his house to cover the balance, and then went home.

Based on Mexico's long history of elites beating criminal charges, few here believe Espinosa will ever be convicted. It is a story Mexicans know well: Accused of stealing \$45 million, Espinosa sleeps in his own bed at night, while Hurtado, who sneaked a 20-cent subway ride, was forced to sleep on a jailhouse cot for months awaiting trial.

Francisco Garduno, the former head of prisons for Mexico City, has given speeches to inmates citing Espinosa as an example of how those accused of major crimes get better treatment than minor offenders, who are invariably poor. "The road to justice opens up wide for them," Garduno said. "But for the poor it is very narrow."

Far from Espinosa's hillside retreat, in a rough neighborhood in the southeast side of the city, Tellez, the Catholic priest, runs a church program to get minor offenders out of jail.

Frustrated with the government's approach to petty criminals, the church has quietly begun its own effort to help. The church pays fines and bail for thousands of nonviolent petty criminals, most of them first offenders. People convicted of a crime are often allowed to choose jail time or a fine. Tellez said he has handled cases of many who could have avoided jail or served less time by paying a fine of as little as \$25.

"It absolutely is unfair that money determines freedom," Tellez said.

Church lawyers last year reviewed the files of 11,000 prisoners in Mexico City jails, half the city's inmates. They concluded that at least 4,000 were minor offenders stuck behind bars because they could not afford to pay fines or bail. In all, the church has arranged for the release of 4,100 people.

A private foundation, supported by Telefonos de Mexico, or Telmex, the country's largest telephone company, has paid for the release of 20,000 minor offenders in the last five years.

The foundation spokesman, Mario Cobo Trujillo, said cases have included a man, charged with injuring another man in a fight, who spent eight months in jail awaiting trial until the foundation paid his \$25 bail. Cobo said another man spent more than 18 months awaiting trial for want of \$100 for bail.

Mexico's culture of official secrecy has kept the extent of the problem hidden. Until recently all prison records in Mexico were considered confidential, and they are still difficult to obtain. That has made it hard to document how the system has been primarily focused on the least significant crimes.

But now that church lawyers and human rights workers are being given access, members of the public are getting their first glimpses at the make-up of the prison population. What they are finding has sparked a drive to substitute restitution and community service for prison time for minor offenders.

Hurtado's case was handled by Judge Eduardo Mata, a chain-smoking former prosecutor. "Ever since I got this case, I thought it was a shame," Mata said in an interview in his glass-walled courthouse office. "He just did something stupid. But there was nothing I could do."

Mata, who has been a judge for nine years, said the case was a frustrating reminder of the strict limits on his authority and how minor offenders end up behind bars.

"I think we need reforms that give judges more freedom," he said. "We don't have the flexibility we need."

A Mexican judge's main task is to read files and issue a sentence that falls between the minimum and maximum penalty established in the criminal codes. In Mexico there are no jury trials. And in many cases, the judge never even sees the defendant, issuing his decision based on the written record. Limiting the judge's authority is meant to limit bribery and other corruption on the bench.

"Our hands are tied by the law," Mata said. "We can't do anything if we think the minimum sentence is unfair."

Mata recalled a case in which a young man stole a bag of bread from a woman in a Mexico City market. Police grabbed him immediately, and they and the thief discovered that the woman had also stuffed 40,000 pesos — about \$4,500 — into the bag after a trip to the bank.

Mata said he wanted to sentence the man based on his intention, which he said was to steal a loaf of bread. But because the man had committed a major robbery, even unwittingly, Mata said, the law required him to sentence him to several years in prison.

In Hurtado's case, Mata said the best he could do was issue the minimum sentence for his crime: four years in prison and a fine of about \$950. Mata said he then used the only wiggle room the law allowed him, letting Hurtado substitute an additional fine of about \$560 for his prison time.

"He didn't damage society in any way," Mata said. "I didn't like the sentence I had to give him. Our laws aren't that fair."

Gaunt and defeated, Hurtado walked out of jail on March 13 after 63 days behind bars.

A former employer lent him more than \$1,500 to pay his fines, allowing him to avoid a prison sentence that would have kept him locked up until 2006. That makes him luckier than most. But it will take every peso of his earnings — and his mother's — for more than a year to pay back his debt.

Former prison chief Garduno, who now runs the city's transportation department, is outraged at how the system treated Hurtado and how it punishes the wrong people. So he gave him a city job to help him pay off his debts.

"I am trying to repair the damage done to our society," Garduno said. "I am trying to rectify something that has happened to thousands of people in Mexico."

This story is one of a series examining Mexico's justice system. For previous stories see <http://www.washingtonpost.com/wp-dyn/world/issues/mexicojustice/>. Researcher Laurie Freeman in Mexico City contributed to this report.

*A Matter of Degree: How a Jury Decided That a Coffee Spill Is Worth \$2.9 Million
McDonald's Callousness Was Real Issue, Jurors Say, In Case of Burned Woman
How Hot Do You Like It?*

By Andrea Gerlin, *The Wall Street Journal*

Albuquerque, N.M.—When a law firm here found itself defending McDonald's Corp. in a suit last year that claimed the company served dangerously hot coffee, it hired a law student to take temperatures at other local restaurants for comparison.

After dutifully slipping a thermometer into steaming cups and mugs all over the city, Danny Jarrett found that none came closer than about 20 degrees to the temperature at which McDonald's coffee is poured, about 180 degrees.

It should have been a warning.

But McDonald's lawyers went on to dismiss several opportunities to settle out of court, apparently convinced that no jury would punish a company for serving coffee the way customers like it. After all, its coffee's temperatures helps explain why McDonald's sells a billion cups a year.

But now—days after a jury here awarded \$2.9 million to an 81-year-old woman scalded by McDonald's coffee—some observers say the defense was naïve. "I drink McDonald's coffee because it's hot, the hottest coffee around," says Robert Gregg, a Dallas defense attorney who consumes it during morning drives to the office. "But I've predicted for years that someone's going to win a suit, because I've spilled it on myself. And unlike the coffee I make at home, it's really hot. I mean, man, it hurts."

McDonald's, known for its fastidious control over franchises, requires that its coffee be prepared at very high temperatures, based on recommendations of coffee consultants and industry groups that say hot temperatures are necessary to fully extract the flavor during brewing. Before trial, McDonald's gave the opposing lawyer its operations and training manual, which says its coffee must be brewed at 195 to 205 degrees and held at 180 to 190 degrees for optimal taste. Since the verdict, McDonald's has declined to offer any comment, as have their attorneys. It is unclear if the company, whose coffee cups warn drinkers that the contents are hot, plans to change its preparation procedures.

Coffee temperature is suddenly a hot topic in the industry. The Specialty Coffee Association of America has put coffee safety on the agenda of its quarterly board meeting this month. And a spokesman for Dunkin' Donuts Inc., which sells about 500 million cups of coffee a year, says the company is looking at the verdict to see if it needs to make any change to the way it makes coffee.

Others call it a tempest in a coffee pot. A spokesman for the National Coffee Association says McDonald's coffee conforms to industry temperature standards. And a spokesman for Mr. Coffee Inc., the coffee-machine maker, says that if customer complaints are any indication, industry settings may be too low—some customers like it hotter. A spokeswoman for Starbucks Coffee Co. adds, "Coffee is traditionally a hot beverage and is served hot and I would hope that this is an isolated incident."

Coffee connoisseur William McAlpin, an importer and wholesaler in Bar Harbor, Maine, who owns a coffee plantation in Costa Rica, says 175 degrees is "probably the optimum temperature, because that's when aromatics are being released. Once the aromas get in your palate, that is a large part of what makes the coffee a pleasure to drink."

Public opinion is squarely on the side of McDonald's. Polls have shown a large majority of Americans—including many who typically support the little guy—to be outraged at the verdict. And radio talk-show hosts around the country have lambasted the plaintiff, her attorneys and the jurors on the air. Declining to be interviewed for this story, one juror explained that he already had received angry calls from citizens around the country.

It's a reaction that many of the jurors could have understood—before they heard the evidence. At the beginning of the trial, jury foreman Jerry Goens says he "wasn't convinced as to why I needed to be there to settle a coffee spill."

At that point, Mr. Goens and the other jurors knew only the basic facts: that two years earlier, Stella Liebeck had bought a 49-cent cup of coffee at the drive-in window of an Albuquerque McDonald's, and while removing the lid to add cream and sugar had spilled it, causing third-degree burns of the groin, inner thighs and buttocks. Her suit, filed in state court in Albuquerque, claimed the coffee was "defective" because it was so hot.

What the jury didn't realize initially was the severity of her burns. Told during the trial of Mrs. Liebeck's seven days in the hospital and of her skin grafts, and shown gruesome photographs, jurors began taking the matter more seriously. "It made me come home and tell my wife and daughters don't drink coffee in the car, at least not hot," says juror Jack Elliott.

Even more eye-opening was the revelation that McDonald's had seen such injuries many times before. Company documents showed that in the past decade McDonald's had received at least 700 reports of coffee burns ranging from mild to third degree, and had settled claims arising from scalding injuries for more than \$500,000.

Some observers wonder why McDonald's, after years of settling coffee-burn cases, chose to take this one to trial. After all, the plaintiff was a sympathetic figure—an articulate, 81-year-old former department store clerk who said under oath that she had never filed suit before. In fact, she said, she never would have filed this one if McDonald's hadn't dismissed her request for compensation for pain and medical bills with an offer of \$800.

Then there was the matter of Mrs. Liebeck's attorney. While recuperating from her injuries in the Santa Fe home of her daughter, Mrs. Liebeck happened to meet a pair of Texas transplants familiar with a Houston attorney who had handled a 1986 hot-coffee lawsuit against McDonald's. His name was Reed Morgan, and ever since he had deeply believed that McDonald's coffee is too hot.

For that case, involving a Houston woman with third-degree burns, Mr. Morgan had the temperatures of coffee taken at 18 restaurants such as Dairy Queen, Wendy's, and Dunkin' Donuts, and at 20 McDonald's restaurants. McDonald's, his investigator found, accounted for nine of the 12 hottest readings. Also for that case, Mr. Morgan deposed Christopher Appleton, a

McDonald's quality assurance manager, who said "he was aware of this risk...and had no plans to turn down the heat," according to Mr. Morgan. McDonald's settled that case for \$27,500.

Now, plotting Mrs. Liebeck's case, Mr. Morgan planned to introduce photographs of his previous client's injuries and those of a California woman who suffered second-and third-degree burns after a McDonald's employee spilled hot coffee into her vehicle in 1990, a case that was settled out of court for \$230,000.

Tracy McGee of Rodney Dickason, Sloan, Akin & Robb, the lawyers for McDonald's, strenuously objected. "First-person accounts by sundry women whose nether regions have been scorched by McDonald's coffee might well be worthy of Oprah," she wrote in a motion to the state court Judge Robert Scott. "But they have no place in a court of law." Judge Scott did not allow the photographs nor the women's testimony into evidence, but said Mr. Morgan could mention the cases.

As the trial date approached, McDonald's declined to settle. At one point, Mr. Morgan says he offered to drop the case for \$300,000, and was willing to accept half that amount. But McDonald's didn't bite.

Only days before the trial, Judge Scott ordered both sides to attend a mediation session. The mediator, a retired judge, recommended that McDonald's settle for \$225,000, saying a jury would be likely to award that amount. The company didn't follow his recommendation.

Instead, McDonald's continued denying any liability for Mrs. Liebeck's burns. The company suggested that she may have contributed to her injuries by holding the cup between her legs and not removing her clothing immediately. And it also argued that "Mrs. Liebeck's age may have caused her injuries to have been worse than they might have been in a younger individual, "since older skin is thinner and more vulnerable to injury."

The trial lasted seven sometimes mind-numbing days. Experts dueled over the temperature at which coffee causes burns. A scientist testifying for McDonald's argues that any coffee hotter than 130 degrees could produce third-degree burns, so it didn't matter whether McDonald's coffee was hotter. But a doctor testifying on behalf of Mrs. Liebeck argued that lowering the serving temperature to about 160 degrees could make a big difference, because it takes less than three seconds to produce a third at 190 degrees, about 12 to 15 seconds at 180 degrees and about 20 seconds at 160 degrees.

The testimony of Mr. Appleton, the McDonald's executive, didn't help the company, jurors said later. He testified that McDonald's knew its coffee sometimes caused serious burns, but hadn't consulted burn experts about it. He also testified that McDonald's had decided not to warn customers about the possibility of severe burns, even though most people wouldn't think it possible. Finally, he testified that McDonald's didn't intend to change any of its coffee policies or procedures, saying, "There are more serious dangers in restaurants."

Mr. Elliott, the juror, says he began to realize that the case was about "callous disregard for the safety of the people."

Next for the defense came P. Robert Knaff, a human-factors engineer who earned \$15,000 in fees from the case and who, several jurors said later, didn't help McDonald's either. Dr. Knaff told the jury that hot-coffee burns were statistically insignificant when compared to the billion cups of coffee McDonald's sells annually.

To jurors, Dr. Knaff seemed to be saying that the graphic photos they had seen of Mrs. Liebeck's burns didn't matter because they were rare. "There was a person behind every number and I don't think the corporation was attaching enough importance to that," says juror Betty Farnham.

When the panel reached the jury room, it swiftly arrived at the conclusion that McDonald's was liable. "The facts were so overwhelmingly against the company," says Ms. Farnham. "They were not taking care of their consumers."

Then the six men and six women decided on compensatory damages of \$200,000, which they reduced to \$160,000 after determining that 20% of the fault belonged to Mrs. Liebeck for spilling the coffee.

The jury then found that McDonald's had engaged in willful, reckless, malicious or wanton conduct, the basis for punitive damage. Mr. Morgan had suggested penalizing McDonald's the equivalent of one to two days of companywide coffee sales, which he estimated at \$1.35 million a day. During the four-hour deliberation, a few jurors unsuccessfully argued for as much as \$9.6 million in punitive damage. But in the end, the jury settled on \$2.7 million. McDonald's has since asked the judge for a new trial. Judge Scott has asked both sides to meet with a mediator to discuss settling the case before he rules on McDonald's request. The judge also has the authority to disregard the jury's finding or decrease the amount of damages.

One day after the verdict, a local reporter tested the coffee at the McDonald's that had served Mrs. Liebeck and found it to be a comparatively cool 158 degrees. But industry officials say they doubt that this signals any companywide change. After all, in a series of focus groups last year, customers who buy McDonald's coffee at least weekly say that "morning coffee has minimal taste requirements, but must be hot," to the point of steaming.

Examples of the U.S. Legal System in Action

Man Tied to Pole Wins Suit; Pr. George's, Police Ordered to Pay \$647,000 in Rights Case

By Ruben Castaneda, Washington Post

A federal civil jury in Greenbelt found yesterday that Prince George's County police violated the civil rights of a Salvadoran immigrant who in 1996 was left handcuffed to a post in the dark. The jury ordered the county and the officers to pay the man \$647,000.

The award for Nelson Omar Robles, 26, is believed to be the highest civil jury judgment against county police in about a decade.

"The act of being tied to a pole—they treated him like a dog," said juror Robert Sehgal, 71, a retired scientist from Chevy Chase.

The jury, which deliberated about 13 hours over three days, found for Robles on two of his four claims of civil rights violations and awarded him \$150,000 in compensatory damages for his suffering.

The rest of the award is in punitive damages—so called because they are designed to punish the defendants for their actions. The jury awarded Robles punitive damages of \$350,000 against the county, \$119,000 against former county police lieutenant James Rozar and \$28,000 against county police officer Antonio DeBarros.

The county indemnifies officers in lawsuits stemming from their actions while on duty and pays any damages assessed against them.

Jury foreman Edward Stewart, of Burtonsville, said jurors arrived at those awards by proposing amounts they believed were fair and reaching a consensus.

The jury found that the officers and the county were not liable for violations of the state constitutional protection against unreasonable search and seizure. But they found that both officers acted with malice when they used strong plastic flex cuffs to tie Robles to a pole about 5 a.m. Aug. 17, 1996.

"I'm happy," Robles, a Hyattsville construction worker, said after the verdict. "I think the decision is just. I don't want what happened to me to happen to anyone else."

"Simple justice was served here," said Robles' Riverdale attorney, Terrell N. Roberts III.

Deputy County Attorney John Bielec, who defended the county and both officers, said, "We're disappointed in the verdict." He said he plans to appeal aspects of the verdict but declined to comment further.

The incident began about 3 a.m. on that warm August night. According to court testimony and court records, DeBarros went to a Langley Park apartment complex to investigate a report of people making too much noise.

Robles and three friends were outside the apartments, drinking beer and talking, according to court testimony. DeBarros called a police dispatcher to check the names of each of the friends for warrants and learned that Robles was wanted in Montgomery County on a warrant for five traffic violations. The violations stemmed from a non-injury accident, and Robles testified he was not aware the warrant existed.

DeBarros arrested Robles. A short time later, Rozar, the ranking officer for that patrol area, arrived, according to court testimony.

Rozar testified that he was frustrated when Montgomery County police refused his request to meet him at the county line so Robles could be handed over. A Montgomery police sergeant testified that his officers were busy responding to a house burglary.

At the direction of Rozar, DeBarros drove Robles to a parking lot just inside Montgomery County, according to court testimony. There, Rozar directed DeBarros to take Robles to a metal pole supporting a staircase, and the lieutenant took a pair of plastic flex cuffs out of his unmarked car and tied Robles to the pole, according to court testimony.

Then they left, and Rozar placed an anonymous phone call to Montgomery police, reporting that a man was tied to a pole, according to court testimony.

A police trial board found that Rozar violated the department's general orders by tying Robles to a pole and leaving him. He retired with full benefits in 1997. The police trial board found no wrongdoing by DeBarros, ruling that he was following Rozar's orders.

Rozar insisted in his testimony that he drove to a nearby spot and watched Robles until Montgomery officers arrived, even though Montgomery officers testified they did not see him.

Jury foreman Stewart said the jury did not believe that Rozar stayed to watch Robles.

Judge Slashes Handcuffed Man's Award

By Ruben Castaneda, *The Washington Post*

Four months after a federal civil jury awarded \$647,000 to a Salvadoran immigrant who was left handcuffed to a post by Prince George's County police, a U.S. District Court judge in Greenbelt has reduced the amount by more than \$400,000.

U.S. District Judge Peter J. Messitte ruled that while county police definitely humiliated Nelson Omar Robles, he was not physically harmed and the jury award was excessive.

In April, a federal civil jury awarded the larger amount to Nelson Omar Robles, 26, after finding that Prince George's police violated his civil rights. Two county police officers used strong plastic cuffs to tie Robles to a pole in the early-morning hours of Aug. 17, 1996, according to testimony.

Prince George's police had detained Robles because he was wanted in Montgomery County for five traffic violations. Officers testified that they cuffed Robles to a pole near the county line and left him there because Montgomery County police said they were too busy to pick him up. Robles was left alone for about 15 minutes before Montgomery police arrived.

Messitte also denied a motion by Robles that the county be ordered to pay Robles \$84,000 in attorneys' fees.

Robles can accept the reduced amount or opt for a new trial. Terrell N. Roberts III, Robles' attorney, said Robles will probably accept the smaller amount of nearly \$245,000.

Spires v. Spires

743, A.2d, 186, (D.C. App. 1999)

TERRY, Appellant Myles

Spires, Jr., appeals from an order awarding appellee Yvonne Spires custody of their three minor children. Mr. Spires maintains that the trial court abused its discretion in failing to enforce provisions of marital and separation agreements which provided that he be awarded sole custody of the children and have complete power to determine Mrs. Spires' visitation rights. We hold that because those portions of the agreements are unenforceable in the District of Columbia, the trial court correctly disregarded them and based its decisions on custody and visitation solely on the best interests of the children. We also reject appellant's contention that the trial court erred in failing to give adequate consideration to the relationship between the children and their half-brother. Finding no error in the record before us, we affirm.

Myles and Yvonne Spires were married on October 27, 1984. The marriage produced three children: Myles III, born August 1, 1985; Lorenzo, born October 16, 1986; and Paul, born August 22, 1989. Delanta Spires, Mr. Spires' son from a previous relationship, also lived in the marital home. Sometime around 1990 the marital relationship began to deteriorate because of financial disputes and mutual suspicions of infidelity. On September 23, 1991, following a three-day separation, the parties signed a document described as a "marital agreement," in which Mr. Spires promised to remain married to Mrs. Spires as long as she complied with thirteen "Articles of Continuance." In the event of a divorce, seven "Articles of Dissolution" would control. These articles provided, in part, that neither party would pay any child support or alimony, and that Mr. Spires would have sole custody of the children with absolute power to determine Mrs. Spires' visitation rights.

On March 22, 1994, Mrs. Spires left the marital home. That same day, she drafted a handwritten letter declaring her intent to dissolve the marriage, granting Mr. Spires "sole proprietorship" of all real property, retaining to herself only selected articles of clothing "and other miscellaneous items," and relinquishing "all custody and parental rights and authority" The letter concluded with a statement that it was "mastered [sic] devoid of undue duress" and that Mrs. Spires "only desired to pursue a new and different life alone."

Several months later, Mr. Spires filed a complaint seeking a divorce and permanent custody of the children. Mrs. Spires filed an answer and counterclaim, also seeking a decree of divorce, custody of the children, child support, equitable distribution of personal property, and an equitable interest in a Maryland home which Mr. Spires co-owned with his alleged mistress. A few days later, Mr. Spires filed a motion to enforce the marital and separation agreements. Mrs. Spires filed an opposition, claiming that the agreements were signed without full disclosure of Mr. Spires' interest in the Maryland property.

The case went to trial before a judge of the Superior Court, and upon its conclusion the judge awarded interim custody of the children to Mrs. Spires. The judge ruled that a final determination would be made after the completion of a home study by the Family Branch of the court's Social Services Division and psychological testing conducted by Washington Assessment and Therapy Services ("WATS").

Joyce Bradford, a court probation officer, performed the home study. In her evaluative summary, Ms. Bradford recommended that custody of the three children be awarded to Mrs. Spires. Although Mr. Spires presented the reports of two other therapists which contained claims of child abuse made against Mrs. Spires by Delanta, Ms. Bradford found the allegations unfounded, malicious, motivated by a desire to defame Mrs. Spires, and deliberately concocted to influence the court proceedings. In her testimony at a hearing on November 15, 1995, Ms. Bradford stated that the child abuse allegations were not supported by her interviews with the children and their teachers at Gibbs Elementary School. She found it highly unlikely, given Delanta's prior history of abuse (by his biological mother), that he would be able to mask the abuse described in the therapists' reports. Ms. Bradford further stated that Delanta's "overall demeanor" indicated to her that he was merely "reciting information that had been given to him" by someone else. None of the other children mentioned any incidents of abuse involving Mrs. Spires. On the basis of her investigation, Ms. Bradford opined that "the children [were] being given negative information in order to legitimize Mr. Spires' individual claims."

The wishes of the children were inconclusive. Myles III said that he wanted to live with his father, Paul preferred living with his mother, and Lorenzo did not state a preference. Ms. Bradford testified that the children were "bonded" and had a very close relationship with their half-brother Delanta. According to Ms. Bradford, the best solution to the custody issue would be a joint custody arrangement, but the relationship between the parents made such an arrangement unfeasible.

The court in due course entered findings of fact, conclusions of law, and a judgment of absolute divorce. With respect to custody, the court found that Mrs. Spires had been the primary caretaker for most of the children's lives; that she had left the family home in March 1994 because she believed that was the only way to free herself from Mr. Spires' control and domination; that Mrs. Spires never intended to abandon the children, and in fact attempted to have them join her as quickly as possible; that Mrs. Spires had steady employment and had maintained a stable and appropriate home for the children, attending to their physical, educational, and emotional needs; and that the children were comfortable with Mrs. Spires in the home she had created. In contrast, the court found that Mr. Spires "has not been completely candid with the court regarding his living situation, his relationship with [his alleged mistress], and several other matters," including his sources of income, and that Mr. Spires had spoken negatively about Mrs. Spires to the children in an attempt to undermine her, a factor which the court considered "of great significance in making a custody determination in this case."

The court's findings were based on its own interviews with the children, the psychological assessment by WATS, the home study evaluation, and Ms. Bradford's testimony at the hearing, which the court found "very credible and insightful." The court concluded that the children's best interests would be served by awarding Mrs. Spires permanent custody while granting liberal visitation privileges to Mr. Spires, consistent with Ms. Bradford's recommendation. Additionally, Delanta was permitted to visit the other children at Mrs. Spires' home.

II

As a general rule, separation agreements determining property rights are to be encouraged, and their provisions are enforceable in court. *Lanahan v. Nevius*, 317 A.2d 521, 524 (D.C. 1974); *Doerfler v. Doerfler*, 196 A.2d 90, 91 (D.C. 1963). "In the absence of fraud, duress, concealment, or overreaching, a husband and wife may enter into a valid separation agreement which finally settles all property rights and claims between them, and constitutes a bar to further claims by the wife." *Davis v. Davis*, 268 A.2d 515, 517 (D.C. 1970) (citations omitted). Agreements regarding the custody of children, however, are another matter entirely.

In the District of Columbia, parents "may use a separation agreement to establish child custody and visitation rights" *Portlock v. Portlock*, 518 A.2d 116, 118 (D.C. 1986). Generally, such agreements are enforceable, like property settlements, "in the absence of fraud, duress, concealment or overreaching." *Id.* (citing *Cooper v. Cooper*, 472 A.2d 878, 880 (D.C. 1984)); see also *Rice v. Rice*, 415 A.2d 1378, 1382 (D.C. 1980). However, the court has the authority to modify custody arrangements agreed upon by the parties if it is in the best interests of the children to do so. *Owen v. Owen*, 427 A.2d 933, 938 (D.C. 1981); *Rice*, 415 A.2d at 1383. The determination of the children's best interests, which is always "the controlling consideration," is "entrusted to the sound discretion of the trial court." *Owen*, 427 A.2d at 938; accord, e.g., *Utley v. Utley*, 364 A.2d 1167, 1170 (D.C. 1976); *Willcher v. Willcher*, 294 A.2d 486, 487 (D.C. 1972) (expressly recognizing that "the best interest of a child takes precedence over any agreement executed by its parents"). To the same effect is *Emrich v. McNeil*, 75 U.S. App. D.C. 307, 310, 126 F.2d 841, 844 (1942): "After submitting themselves to the jurisdiction of the court, the parents cannot by their agreement deprive it of power to control the custody and maintenance of the child. Such a child is in a very real sense the ward of the court. It has power to change the custody of the child ..."

In light of *Owen* and other controlling case law, we hold that the provisions in the marital and separation agreements upon which Mr. Spires relies could not deprive the court of the power to determine whether the parties' custody arrangement was in the best interests of the children. The trial court thus properly considered whether the custody provisions in the agreements were consistent with those interests. On the record before us, we conclude that the court did not err in ruling that those provisions were contrary to the children's best interests and in deciding to award custody to Mrs. Spires.

III

Mr. Spires also contends that the trial court abused its discretion in awarding custody of the three children to Mrs. Spires without giving adequate consideration to the relationship between the children and their half-brother, Delanta, as required by statute. This contention is not supported by the record.

Mr. Spires correctly notes that, despite the court's instructions, the home study did not address the relationship between the children and Delanta. At the November 15 hearing, however, Ms. Bradford testified that the children were "bonded" and had a very close relationship with Delanta. Furthermore, the court's final order included a provision for Delanta to visit the children at Mrs. Spires' home, reflecting the court's concern for maintaining and nurturing this relationship. Mr. Spires' claim that the trial court did not consider this factor is thus without merit.

In any dispute between parents over the custody of minor children, the primary consideration is the best interests of the children. *Bazemore v. Davis*, 394 A.2d 1377 (D.C. 1978) (en banc). Because of the "intensely individual nature of custody determinations," we accord

those decisions "great deference" and will reverse only upon a showing of a clear abuse of discretion. *Prost v. Greene*, 652 A.2d 621, 626 (D.C. 1995); accord, e.g., *Fitzgerald v. Fitzgerald*, 566 A.2d 719, 721 (D.C. 1989); *Dorsett v. Dorsett*, 281 A.2d 290, 292 (D.C. 1971).

As required by Super. Ct. Dom. Rel. R. 52 (a), the trial court supported its custody determination with detailed findings of fact and conclusions of law. See, e.g., *Utley v. Utley*, 364 A.2d at 1169; D.C. Code § 16-911 (a-2)(6)(C). The court based these findings on its own interviews with the children, the psychological assessment conducted by WATS, the home study evaluation by Joyce Bradford, and Ms. Bradford's testimony at the November 15 hearing. In particular, the court found that Mrs. Spires had been the primary caretaker for most of the children's lives and that she never had any intention to abandon them. The court also found that Mrs. Spires had steady employment; that she maintained a stable and appropriate home for the children, attending to their physical, educational, and emotional needs; and that the children were comfortable with Mrs. Spires in the home she had created. The court gave due consideration to the expressed wishes of the children, but found them to be inconclusive and therefore worthy of little weight.

The court faulted Mr. Spires for not being "completely candid with the Court regarding his living situation, his relationship with [his alleged mistress], and several other matters," including his sources of income. Noting that Mr. Spires has spoken negatively about Mrs. Spires to the children in an attempt to undermine her, the court said that it considered this factor to be "of great significance in making a custody determination in this case." One of the reasons why we accord such a high level of deference to trial judges in child custody cases is that "in addition to [her] evaluation of the credibility of witnesses ... only the trial judge has an opportunity to appraise at first hand the character of the parties." *Dorsett v. Dorsett*, 281 A.2d at 292. It was therefore entirely appropriate for this trial judge to base her ruling, at least in part, on an assessment of Mr. Spires' character and its effect on the children's relationship with their mother.

Both in his brief and at oral argument, Mr. Spires contends that the trial court erroneously denied him the opportunity to present witnesses relevant to the custody determination. We cannot consider these claims, however, because Mr. Spires has failed to include in the record on appeal a transcript of the proceeding at which the trial court allegedly made these rulings. A party noting an appeal from a judgment of the trial court has an affirmative duty "to present this court with a record sufficient to show affirmatively that error occurred." *Cobb v. Standard Drug Co.*, 453 A.2d 110, 111 (D.C. 1982) (citations omitted). "We cannot base our review of errors upon statements of counsel [or, in this case, statements of a party] which are unsupported by [the] record." *D.C. Transit System, Inc. v. Milton*, 250 A.2d 549, 550 (D.C. 1969) (cited with approval in *Cobb*, 453 A.2d at 112). Thus we reject Mr. Spires' argument for lack of record support.

The record which we do have shows that "the trial judge has considered all relevant factors and no improper ones, and [that] her decision is ... supported by substantial reasoning drawn from a firm factual foundation in the record." *Prost v. Greene*, 652 A.2d at 626 (citations omitted). The order from which this appeal is taken is therefore

Affirmed.

CONCUR:

SCHWELB, concurring:

I agree that the judgment should be affirmed, and I am pleased to join the opinion of the court. I add this brief concurrence because the contents of the purported agreement of the parties summarized in footnote 2 of the court's opinion and in the associated text are sufficiently

remarkable to warrant the reproduction of the document in full. I have therefore appended a copy of the "Marital Agreement" to my separate opinion. I commend the entire agreement to the reader's attention, for the full impact of its depravity is difficult to capture even in the most accurate summary.

Although, unfortunately, some men abuse, oppress and humiliate their wives, it is surely rare for a husband not only to reduce to writing an instrument requiring total subordination by the wife to the husband's caprice, but also to require his unfortunate spouse to sign it. I find it even more remarkable that a husband who has contrived to secure his wife's formal written assent to the husband's assertion of supremacy would then have the temerity to ask a court to enforce such an oppressive document according to its terms.

In my opinion, a "contract" such as the one between these parties, which formalizes and seeks to legitimize absolute male domination and female subordination within the marital relationship, is against the public policy of this jurisdiction. It may not be enforced in our courts, nor can it be permitted to affect adversely the rights of the oppressed wife or her children. To me, the appendix to this opinion is worth preserving as a striking example of the lengths to which some men would go to formalize the absurd and to exalt to contractual status their petty domestic tyranny.

One would hope that the document before us will be regarded by the reader as a curious but deeply offensive relic of a bygone era. It reflects a view of the relationship between the sexes that should have been consigned long ago to well-deserved oblivion. Under the law, the parties' now-defunct marriage made Mrs. Spires her former husband's partner, not his slave.

MARITAL AGREEMENT

This document drawn on this 23rd day of September 1991 with the below affixed signatures of Yvonne Angenette Spires, Myles Spires, Jr. and a notary public, shall henceforth serve as the governing document for the continuance and, if applicable, the dissolution (including distribution of assets and placement of children) of the abovementioned parties' marriage, which began October 27, 1984, as per the husband's, Myles Spires, Jr., discretion.

The husband, Myles Spires, Jr., hereby agrees to continue in this marriage provided that the wife, Yvonne Angenette Spires, complies with the following articles of continuance and any addendums added bearing the notarized signature of the husband.

ARTICLES OF CONTINUANCE

1. Wife shall in no case obtain money from the joint bank accounts, individual accounts, or house emergency funds without express permission of the husband.

2. Wife shall in no case divulge information of any kind which concerns domestic relationships, i.e., marital difficulties, particulars concerning children, job status(es), and financial information to anyone outside of the marriage without the express permission of the husband. Anyone includes the wife's family, acquaintances, and friends and the husband's family, acquaintances and friends.

3. Wife shall in no way attempt to influence the status/intensity of the relationships that husband has with other individuals outside of the marriage unless the husband verbally requests input from the wife. Moreover, the wife shall, at all times, treat the husband's family, friends, and acquaintances with the utmost respect.

4. Wife shall immediately divulge to the husband any input concerning the marriage or matters concerning the marriage given by outside parties.

5. In public, wife shall in no way dispute husband on any matters; rather, shall present herself in full accordance with him at all times. Matters of dispute should be handled in private and with due respect, i.e., no yelling, profanity, or badgering.

6. Wife shall conduct herself in accordance with all scriptures in the Holy Bible applicable to marital relationships germane to wives and in accordance with husband's specific requests. Wife shall consult husband as to the applicability of scriptures.

7. Wife's sexual relationships shall remain spontaneous and solely with the husband.

8. Wife shall carry out requests of the husband in strict accordance, i.e., timeliness, sequence, scheduling, etc.

9. Wife shall govern the affairs of the children at her discretion. However, wife shall always inform the husband of any particular dealings with the children, i.e., disciplining, illness, etc. and any input by the husband concerning the children shall be considered a request; handled according to Article 8 of this document.

10. Wife must receive express permission from the husband before removing or lending property jointly owned and/or valued in excess of \$100.00 (individually or jointly owned).

11. Wife shall not receive any loan, and/or a monetary or other gift(s) without first obtaining permission from husband. Should it be impossible to contact husband to obtain such permission, wife may receive the loan or gift(s); however, upon next contact with the husband, wife shall inform the husband of all details concerning the loan and/or gift(s), i.e., giver's name, amount, nature, lender's name. Should the wife find anything of value, it shall be treated as receiving a gift or loan.

12. Wife shall participate and interact in the husband's ministry and business affairs according to the husband's direction only. Moreover, she shall in no way administer funds, interact with supporters, participants or parishioners, or interface with clients without the express direction of the husband.

13. It is agreed that violation of any of these articles by the wife shall be considered mental cruelty and abandonment of the marriage and a request for legal separation and divorce, and may result in legal separation and divorce proceedings.

ARTICLES OF DISSOLUTION

Should the wife violate any of the abovementioned articles for continuance, and the legal separation and divorce proceedings are instituted, the following articles of dissolution shall serve as a settlement agreement for the legal separation and divorce.

ARTICLES OF DISSOLUTION

1. The present dwelling where the husband, wife and children now reside, 333 17th Street, N.E., Washington, D.C., shall become the sole possession of the husband. Myles Spires, Jr., with all furnishings, appliances, lighting fixtures and any other articles desired by the husband, Myles Spires, Jr.

2. The children, Delanta A. Spires, Myles Spires III, Lorenzo J. Spires, and Paul Seqouyah Spires shall be in the custody of the husband, Myles Spires, Jr. Visitation shall be determined by the husband.

3. The automobiles shall be divided equally; the red 1987 Ford Taurus shall be the sole possession of the husband, Myles Spires, Jr., and the blue 1988 Ford Escort shall be the sole possession of the wife, Yvonne Angenette Spires.

4. All monies in individual and joint banking accounts shall be the sole possession of the husband, Myles Spires, Jr.

5. Neither party shall be required to pay one another child support or alimony.

6. All unpaid joint debts shall remain joint debts and shall be divided and paid equally by the husband and wife.

7. All individual debts shall remain individual debts and be paid by the individual in whose name the debt is at the time of legal separation and remain the same upon divorce.

Yvonne Angenette Spires

9/23/91

Date

Myles Spires, Jr.

9/23/91

Date

I hereby certify that Yvonne Spires and Myles Spires appeared before me this 23rd day of September 1991.

Sharee Tawnya Brent

Notary Public

Notes and Questions

In continuing with this text, read and consider the following excerpt. It proposes one method for understanding, evaluating and studying comparative law:

Basic Principles of the Comparative Method

1. Comparative law involves drawing explicit comparisons, and most non-comparative foreign law writing could be strengthened by being made explicitly comparative.

The first clause of this principle may seem to verge on tautology, but it is amazing how much writing about foreign law is not explicitly comparative and yet is thought of as part of comparative law. I wish to insist that the comparative method involve explicit comparison of aspects of two or more legal systems. Some may object that any description of foreign law is implicitly comparative because all descriptions of foreign law are at a minimum trying to make the law of one system comprehensible for those trained in a different system. But I reject that argument on the grounds that the step of actually drawing the comparison is crucial to realizing the intellectual benefits of comparison. Actually framing the comparison makes one think hard about each legal system being compared and about the precise ways in which they are similar or different. If one wishes to claim the benefits of the comparative method, one cannot leave the act of comparison to the reader.

Much "pure" (that is, non-comparative) foreign law scholarship could be made stronger by incorporating explicit comparison. The first argument has to do with strengthening the effectiveness of foreign law writing. Whatever other purposes a study of foreign law may be intended to serve, at a minimum it is no doubt intended to communicate to a domestic audience some aspects of the foreign law. The domestic audience will inevitably compare what the author tells it about foreign law with what they know about their own legal system. The communication will therefore be much more effective if the author draws the comparisons for them by summarizing the most important similarities and differences. In so doing, the foreign law scholar can also prevent the reader from making miscomparisons based on ignorance of her own legal system. This danger is all the more likely if the audience includes people who are not educated as lawyers, as it often does in the case of foreign law studies.

The second reason concerns the question of the audience for foreign law, an even more acute problem for foreign law than most other legal writing. Without explicit comparison to the home country explaining the relevance of the foreign law for the domestic legal system, most domestic lawyers will have little interest in reading a piece about foreign law. There are, no doubt, exceptions. Perhaps some areas of foreign law are of such general interest and obvious importance that a non-comparative, foreign law article on those subjects will interest a general legal audience. Moreover, there will always be groups of country specialists and general comparatists for whom specialized treatment of foreign law will be interesting. Indeed, foreign law articles, even if not comparative, are crucial for comparative law scholars because they permit them to expand the number of jurisdictions with which they work beyond those that use languages with which they are comfortable and to whose legal materials they have access. But beyond these small circles, there are not likely to be very many people who will be interested in a foreign law topic unless the writer explains its relevance for contemporary, domestic issues, and such an explanation necessarily requires some explicit comparison.

Finally, [in view of the ways] in which explicit comparison is especially likely to contribute to our understanding of law, it is a shame for someone to have made the effort to master the details of certain aspects of one or more foreign legal systems and yet not take advantage of that knowledge, which is a prerequisite for comparison, to try to get the benefits of the comparative method....Foreign law scholars could thus help comparative law "bring home the bacon" by employing explicit comparison.

2. The comparative method consists in focusing careful attention on the similarities and differences among the legal systems being compared, but in assessing the significance of differences the comparatist needs to take account of the possibility of functional equivalence.

Comparison starts by identifying the similarities and differences between legal systems or parts of legal systems under comparison. However, in performing the basic comparative job of identifying similarities and differences, one has to consider the scope of comparison: What is going to be compared with what? Here the comparatist comes face to face with the enigma of translation. In one sense every term can be translated because there are things in each legal system that are roughly the functional equivalent of things in the other legal system. In another sense nothing can be translated because the equivalents are different in ways that matter at least for some purposes. At a minimum, generally equivalent terms in each language often have different fields of associated meaning, like, for example, "fairness" and "loyaute."

[Thus] a good comparative law study should normally devote substantial effort to exploring the degree to which there are or are not functional equivalents of the aspect under study in one legal system in the other system or systems under comparison. This inquiry forces the comparatist to consider how each legal system works together as a whole. By asking how one legal system may achieve more or less the same result as another legal system without using the same terminology or even the same rule or procedure, the comparatist is pushed to appreciate the interrelationships between various areas of law, including especially the relationships between substantive law and procedure.

As in all fields of intellectual endeavor, a healthy skepticism about the received wisdom concerning differences and similarities and a strongly self-critical approach toward one's own conclusions are useful tools. Do civil law countries really refuse in all cases to treat court decisions as a source of law or are there civil law analogues to *stare decisis*? Does the U.S. constitutional limitation of federal court power to "cases" and "controversies" really prevent all abstract review of the kind permitted in continental European systems? How similar are the

offices of judge in different legal systems? Or the role of private attorneys in litigation or in counseling? In the end, few rules or legal institutions—maybe none—have precise equivalents in other legal systems, and yet there are many rules and institutions which are broadly similar or similar in some very important ways.

Comparative analysis proceeds in the tension between these two extremes. Good scholarship should normally try to figure out the extent to which the differences identified in law or legal systems are significant because they affect the outcome or the nature of the process and the extent to which they do not.

In using ideals as a common point of departure for comparison, one must be on guard against the natural human tendency to use without reflection the ideals of one's own system as the normative measure for systems that may not accept the ideal. For example, the rule of law is an ideal that developed first in Western Europe and the United States. Some would argue today that it enjoys nearly universal acceptance; others would dispute that it does not, pointing out how its development is tied to the development of society, law, and forms of government in the West. Thus, if one wishes to argue that one legal system is better or more highly developed than another because it better or more fully institutes the rule of law, one should not only consider carefully the question of functional equivalence, but also confront directly the question why it is appropriate to apply the rule of law as a normative measure. Of course, ideals by their nature are meant to carry normative force, so the use of an ideal as a *tertium comparationis* will naturally be understood as a normative argument. Therefore, if the comparatist means the comparison with the ideal solely as an analytic exercise, he had better make his non-normative stance especially clear. If he means it as a normative argument, he had better consider whether it is justifiable to apply the ideal to the societies in question.

3. The process of comparison is particularly suited to lead to conclusions about (a) distinctive characteristics of each individual legal system and/or (b) commonalities concerning how law deals with the particular subject under study.

What should the point of the comparison be? Comparative study of law can be undertaken simply to inform the reader about foreign law, perhaps for the practical purpose of facilitating an international transaction or resolving a conflict of laws problem. It may be part of a campaign of law reform. It may be part of a comparative study of human culture or part of a critical project aimed at exposing the way law masks the exercise of power. It can even be used to spoof legal scholarship. There is no reason why comparative studies should be limited to any particular set of purposes. The comparative method is just a tool.

From the nature of comparative studies, as outlined in the foregoing section, however, it can be seen that comparative law naturally and primarily leads in two directions at once. Because comparison focuses on both differences and similarities, comparative law studies cast light on (1) the special or unique natures of the legal systems being compared and (2) their commonalities with respect to the issue in question. The first direction leads toward defining the distinctive features of each legal system. The second direction leads toward appreciation of commonalities, maybe even universal aspects, of legal systems and insight into fundamental aspects of the particular legal issue in question. Thus a comparative study of contract enforcement in France and the United States should lead to both (a) an appreciation of distinctive aspects of French and U.S. law, respectively, and (b) an appreciation of some of the fundamental problems of enforcement of private agreements in an economy with significant market activity.

Thus comparative studies may uncover interesting ideas for domestic law reform, but in the end the case for adoption of a foreign model cannot rest on the fact that many other countries

have the rule or legal institution. The argument for domestic law reform has to be made in terms of normative claims acceptable within the domestic legal system, and probably the foreign transplant will have to be modified in significant ways precisely because each legal system reflects an at least partially unique legal system.

The simple educative function of helping lawyers from one system understand and communicate effectively with lawyers from another system seems to grow more important every day as human transactions become ever more "globalized." For the same reason, there is renewed interest in efforts to harmonize law, in part by finding the "common core" of different legal systems' rules governing particular areas, like contracts, property, and torts. The spread of human rights discourse drives a similar interest in the "common core" of public law in order to help define, in the weakly normative way discussed above, what the ideal of the "rule of law" should mean. In all of these activities, the basic comparative method leads us to commonalities, simultaneously relativizing differences and correcting overhasty generalizations by revealing distinctive differences, as well.

4. One of the benefits of comparative analysis is its tendency to push the analysis to broader levels of abstraction through its investigation into functional equivalence.

The fact that after careful analysis the aspects to be compared in each legal system remain in some important senses apples and oranges is not bad. The real power of comparative analysis arises precisely from the fact that the process of comparing "apples" and "oranges" forces the comparatist to develop constructs like "fruit." It forces the comparatist to articulate broader categories to accommodate terms that are at least in some significant way functional equivalents and to search on broader levels for functional similarities and differences. For example, consider pretrial discovery in the United States, which permits non-criminal litigants to search widely even in the hands of the opponents for evidence to support their cases. German civil procedure does not recognize a similar general right of one party to look for evidence in the other party's files and among its witnesses outside of the courtroom, but there are some more limited rights to require divulgence of specific information or documents in court.

One might have thought that in looking for analogues to pretrial discovery, there was no need to consider in-court interrogation since U.S. law also provides for that method of eliciting information from the other party and non-party witnesses, but further reflection leads one to see that discovery is but one method of permitting one side to extract information from the other side or from third party witnesses. In-court examination is, of course, another method, and in looking for functional equivalence, one might even want to consider the question of the degree to which both systems shift the burden of proof (or impose strict liability in tort cases) to account for grossly unequal access by the parties to relevant information. Thus the search for functional equivalence with U.S. civil discovery procedures leads to the broader question of how different legal systems handle the inequality between the parties with respect to access to information.

5. The comparative method has the potential to lead to even more interesting analysis by inviting the comparatist to give reasons for the similarities and differences among legal systems or to analyze their significance for the cultures under study.

Comparative study could end with a delineation of relevant similarities and differences. This would satisfy the minimum goal of comparative study, and as the previous sections have indicated, that goal alone requires significant legal analysis if the problems of functional equivalence are investigated thoroughly. However, once one has carefully determined similarities and differences between the legal systems under study, a broader field of inquiry presents itself, one that poses fascinating questions of great general interest. One may ask what

the reasons are for the similarities and differences among the legal systems under study. Alternatively, to avoid simplistic notions of causality in human society, one may ask what the significance of the identified similarities and differences is for an understanding of the respective legal systems and the broader cultures of which they are a part. In either case, the point of the inquiry is to pay attention to the connections (or lack of connections) between the specific differences and similarities under study and broader, more systemic contrasts among legal systems, and most particularly, broader contrasts among societies and cultures.

Seeking answers to these questions will cause the comparatist to consider not only global comparison of legal systems, but also similarities and differences in the respective political, economic, and social systems and historical traditions of which they are a part. This is the aspect of comparative law that leads the student beyond law to the rest of the humanities and social sciences, maybe even to the natural sciences. This is where the various "law ands" become relevant: law and history, law and economics, law and society, even law and literature. Since law is but a part of the seamless whole of human culture, there is in principle scarcely any field of study that might not shed some light on the reasons for or significance of similarities and differences among legal systems. Really good comparative writing should be informed by at least some of these allied fields and will be to the extent it seeks to explain why there are given similarities or differences among legal systems or seeks to assess the significance of such similarities or differences.

6. In establishing what the law is in each jurisdiction under study, comparative law (and, for that matter, studies of foreign law, as well) should (a) be concerned to describe the normal conceptual world of the lawyer, (b) take into consideration all the sources upon which a lawyer in that legal system might base her opinion as to what the law is, and (c) take into consideration the gap between the law on the books and law in action, as well as (d) important gaps in available knowledge about either the law on the books or the law in [action].

(a) Focus on the Normal Conceptual World of the Lawyers

This focus on the conceptual world of the lawyer suggests first and foremost a focus on formal legal reasoning. What counts as a source of law in each system under study? Using the law stated in the formal sources of law, what arguments can be made in each system with respect to the legal question under study and how would they be evaluated by well-trained lawyers in each system respectively? In some systems, like that of the United States with its common law heritage and explicitly political ways of selecting judges, lawyers tend to include a consideration of broader questions of policy in their formal legal reasoning and may also take into consideration the political dimensions of a legal problem in analyzing how a court will likely decide a given issue.

These kinds of policy considerations and political calculations should also be included as part of the mental world of the well-trained lawyer in such a system. Furthermore [appreciating] what does and does not count as a good argument in a foreign legal system requires an understanding of the general philosophical traditions of that culture, at least to the extent that they may have influenced the jurists.

(b) Taking Account of All Sources of Information About the Law

The focus on lawyers' argumentation will counteract the tendency to focus on statutory materials only and will force the comparatist to consult cases and the commentary of scholars, as well. In Sacco's terms, the comparatist will have to deal with the variety of "legal formants"—that is, all the authorities a lawyer working in a given system might consult to find the law, from formal sources of law like constitutions and statutes to authorities that are not recognized as formal sources of law but which are nevertheless influential, such as the writings of jurists. The point of Sacco's formulation is that these legal formants may or may not be in harmony. Indeed, on many important questions, there are likely to be in any legal system that has any substantial degree of autonomy from other political institutions a number of conflicting opinions about what the legal rule is.

By paying attention to all the relevant legal formants, the comparatist will be saved from taking a more simplistic view of the law than does the foreign legal culture the comparatist is studying.

(c) The Gap Between Law on the Books and Law in Action

The discussion of legal formants shows that one cannot confine one's search for foreign law to the statute books. Other legal formants, such as court opinions or the writings of scholars, may show that what is regarded as the law in that society is quite different from what one might have thought it to be if one looked only at the statutes. There thus may be, and probably are in most legal systems, important gaps between the law in the statute books and the law actually applied by the courts. Comparative law should be interested in both, and especially in the explanations and rationales given by participants in the legal system to explain the gap because these explanations may reveal a great deal about legal reasoning in that system.

There are also in all countries gaps between the law applied by courts and the law under which people live who for some reason—poverty, ignorance, attachment to traditional lifestyles, prejudice, corruption, or fear of political persecution—are unable or unwilling to invoke the protection of the formal legal rule. Because lawyers are interested not just in formal legal argumentation, but also in the actual impact of law in the world, the comparatist should be interested in this gap as well. Perceptions of the gap may influence legal reasoning. In Brazil, for example, the gap between the law on the books and law in action has been so evident to Brazilians that it has a special name, the "jeito", and it has, at least in some forms, become a highly prized legal or social institution for obtaining fairness amid the chaos of the formal legal system. It may be especially easy to see this kind of gap in foreign legal systems, but the comparatist should also be on the lookout for it in his own legal system because no legal system is entirely immune to this phenomenon.

Finally, there are also in all countries situations in which the impact of a particular legal rule is affected by practices which are not part of the formal law. For example, the effect that the consideration doctrine could have to hinder the commercial use of options in U.S. law is greatly mitigated by the practice of granting them in return for nominal payment. Medieval Islamic law even developed a rich literature on the subject of legal devices which were forthrightly intended to permit parties to circumvent certain legal proscriptions, like that against payment of interest. In trying to assess the functional equivalence of two systems of rules, it is important to have

information about contracting and other practices which may either attenuate or magnify the impact of the rules.

(d) Gaps in Information About Foreign Law

But comparative law studies are dogged by enormous gaps in the information available. First, libraries' collections of foreign law are hardly ever as complete as the best libraries in the foreign country itself. Second, countries of the civil law tradition do not publish the decisions of appellate courts with the thoroughness and persistence of common law countries. Third, despite the growth of fields like legal sociology, it is often difficult to find empirical studies of the aspects of U.S. law in which a scholar is interested; it is even more difficult to find relevant empirical studies for many other countries, especially third-world countries.

In short, good comparatists should be sensitive to the ever present limitations on information available about foreign legal systems and should qualify their conclusions if they are unable to have access to sufficient information or if they have reason to suspect that they are missing important information. If the gaps are too large, the study should not be undertaken at all because its conclusions about foreign law will be too uncertain to be useful.

7. Comparative studies should be undertaken in a spirit of respect for the other

The last point concerns the attitude a comparatist should have. So much in foreign legal systems seems so bizarre that it shocks us. Why do the Germans and French disdain the U.S. practice of intrusive party-led discovery in civil cases? To the U.S. lawyer, it almost seems as if the Germans and French must not be that interested in finding the truth. To the German and French lawyers, it seems as if the U.S. system fails to protect individual privacy. Neither system is contemptible simply because it is different from the other. In analyzing a foreign legal system, the comparative scholar has to make extraordinary efforts to discern the sense of foreign rules and arrangements.

Indeed, constructive criticism is a sincere form of respect. Moreover, at the end of the day, criticism should be judged, not by the critic's attitude, but by the reasonableness of her premises and the force of her logic. However, before the comparatist criticizes, she must make all possible efforts to avoid a narrowly chauvinistic view. She must try to see the sense of the foreign arrangements even if they are strangely different from her own and seem to represent values directly contrary to her own.

Nevertheless, sometimes a foreign legal system's disregard for certain values compels one to criticize even in the absence of support from the target legal system, especially in situations involving authoritarian governments, in which only the foreigners may have the possibility of publishing their criticism. John C. Reitz, "How To Do Comparative Law," 46 Am. J. Comp. L. 617, 618-635 (1998).

courts of
limited
jurisdiction
court of
general
jurisdiction
intermediate appellate court
court of last resort

* This diagram is adapted from that contained in State Court Caseload Statistics: Annual Report 1988, published by the National Center for State Courts.

SUPERIOR COURT(58 counties)

725 judges, 113 commissioners and referees Jury trials

Tort, contract, real property rights (\$250,000/mo. maximum), miscellaneous civil.

Exclusive domestic relations, estate, mental health, civil appeals jurisdiction.

DWI/DUI. Exclusive triable felony, criminal appeals jurisdiction.

Exclusive juvenile jurisdiction.

COURTS OF APPEAL(6 courts/districts)

88 judges sit in panels

Mandatory jurisdiction in civil noncapital criminal, administrative agency, juvenile cases.

Discretionary jurisdiction in administrative agency, original proceeding, interlocutory decision cases.

SUPREME COURT

7 justices sit en banc

Mandatory jurisdiction in criminal, disciplinary cases.

Discretionary jurisdiction in civil, noncapital criminal, administrative agency, juvenile, original proceeding, interlocutory decision cases.

California Court Structure

MUNICIPAL COURT(88 courts)

566 judges, 134 referees and commissioners

Jury trials except in small claims and infraction cases

Tort, contract, real property rights (\$0/-25,000),small claims (\$2000), miscellaneous civil.

Limited felony, misdemeanor, DWI/DUI.

Traffic/other violations.

JUSTICE COURT(76 counties)

76 judges

Jury trials except in small claims and infraction cases

Tort, contract, real property rights (\$0/-25,000),small claims (\$2000), miscellaneous civil.

Limited felony, misdemeanor, DWI/DUI.

Traffic/other violations.

United States Court of
Appeals (for 11 circuits & D.C.)

Tax Court

Administrative Agencies

U.S. District Court

U.S. Court of

International Trade

U.S. Court of

Federal Claims

Court of Appeals

for the Federal Circuit

Supreme Court of the United States

Nelson Robles

1. The Articles of Continuance state, among other things, that Mrs. Spires may not withdraw any money from the bank without Mr. Spires' express permission; may not "attempt to influence the status/intensity" of any relationship that Mr. Spires may have "with other individuals outside of the marriage unless the husband verbally requests input from the wife;" may not "dispute" Mr. Spires in public "on any matter;" must "conduct herself in accordance with all scriptures in the Holy Bible applicable to marital relationships germane to wives and in accordance with the husband's specific requests;" must maintain a sexual relationship that "remains spontaneous and solely with the husband;" must "carry out requests of the husband in strict accordance, i.e., timeliness, sequence, scheduling, etc.;" and may not receive any loan or gift without first obtaining Mr. Spires' permission. According to the agreement, violation of any of these articles would be considered mental cruelty, abandonment of the marriage, and a request for legal separation and divorce.

2. The trial court ultimately found that this property had not been purchased or maintained with Mr. Spires' funds and therefore was not marital property. That finding was not challenged on appeal.

3. Mrs. Spires asks this court to modify the provisions of the trial court's order granting liberal visitation privileges to Mr. Spires. She does not claim that the trial court abused its discretion, but rather asserts that "new evidence" warrants a modification of the order. Whatever the merits of this claim, it must be presented initially to the trial court, which retains continuing jurisdiction over such matters. See D.C. Code § § 16-911 (a-2)(4)(A) and 16-914 (a)(2) (1997).

4. This appeal involves only those provisions of the marital and separation agreements relating to custody and visitation rights. In her findings of fact, the trial judge noted that "the parties have resolved for themselves any issues regarding personal property acquired during the marriage," and observed that the question of support was the subject of a pending proceeding in Maryland.

5. D.C. Code § § 16-911 (a)(5)(C) and 16-914 (a)(3)(C) both provide that when making a custody determination, the court shall consider "the interaction and interrelationship of the child with his or her parent or parents, his or her siblings, and any other person who may emotionally or psychologically affect the child's best interest"

6. See D.C. Code § § 16-911 (a)(5)(H) and 16-914 (a)(3)(I).

7. See D.C. Code § § 16-911 (a)(5)(B) and 16-914 (a)(3)(B).

8. See D.C. Code § § 16-911 (a)(5)(D), (E), (I), (K) and (N), and 16-914 (a)(3)(D), (E), (J), and (O).

9. See D.C. Code § § 16-911 (a)(5)(A) and 16-914 (A).